

### **REMARKS**

Reconsideration and continued examination of this application is respectfully requested. Claims 1-3, and 5-17 are pending in this application.

#### **1. Status of the Claims**

Claims 1-3 and 5-17 are pending in this application. Claim 4 has been canceled. Claims 1 and 9 have been amended to recite that the binder composition consists essentially of less than about 6% by weight water and at least about 94% by weight sugar. Support for these amendments can be found in the specification as originally filed, for example on:

Page 4, lines 4 -16.

Claims 5 and 6 have been amended to correct the dependency of the claims due to the cancellation of claim 4.

Claims 1, 2, and 12 have been amended to clarify that the elevated temperature referred to in the claims is not directed to a single, particular temperature but any elevated temperature at which the binder is in a liquid state and is sufficiently liquid for snack-food product ingredients to be mixed with the binder by conventional mixing product. Support for these amendments can be found in the specification as originally filed, for example on:

Page 3, lines 1-3.

New claim 17 has been added. Claim 17 is directed to a method of making a granola or snack-food product comprising: (a) mixing ingredients for the granola or snack-food products with a liquid binder to obtain a formable mixture at a temperature of about 90 degrees C or higher, the binder comprising less than about 6% by weight water and at least about 94% by weight sugar, and wherein said binder is a liquid at about 90 degrees C and sets when cooled to room temperature; and (b) cutting the mixture into a plurality of product precursors at about 90 degrees C or higher, while the binder is still liquid. Support for this amendment can be found in the specification as originally filed for example on:

Page 3, lines 11-18; and  
Claim 12.

**2. Prior Art Rejections**

Claims 1, 8, 12, and 16 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 4,451,488 to Cook et al. (Cook). Claims 2-7, 9-11, and 13-15 stand rejected under 35 U.S.C. 103(a) as being obvious over Cook in view of U.S. Patent No. 4,784,867 to LaBaw.

**3. Neither Cook nor LaBaw, alone or in combination, teaches or suggests a binder composition consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar**

Amended claims 1, 9, and new claim 17 recite that the binder composition consists essentially of less than about 6% by weight water and at least about 94% by weight sugar. Neither Cook nor LaBaw, alone or in combination, teach or suggest a binder composition consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.

Cook teaches a binder solution wherein "the sugar content is relatively low..." and which includes polyhydric alcohols as well as salt, shortening, flavoring, and antioxidants. See Cook, col. 2, lines 36-44. Accordingly, Cook not only does not teach or suggest a binder composition consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar as claimed, but Cook further teaches away from the present invention. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical*, 837 F.2d 469 (Fed. Cir. 1988). A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be led in a direction divergent from the path that was taken by the applicant. *Tec Air, Inc., v. Denso Mfg. Mich. Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999). Certainly, one skilled in the art would be led on a path divergent from a binder composition consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar by a reference teaching a binder solution having "a relatively low sugar content," as in Cook.

LaBaw, on the other hand, teaches a binder composition which comprises about 5-10% by weight of water, about 15-30% by weight of fat; and a mixture of sucrose and partially caramelized non-crystallizing sugar in a weight ratio of about 1:0.8-3. See LaBaw (abstract) and col. 4, lines 17-34. As such, LaBaw teaches a binder including fat, that provides a flexible matrix when the binder is heated, within which solid ingredients may be bound. The presently claimed method of utilizing a binder that consists essentially of water and sugar is not taught or suggested by the fat-based binder composition of LaBaw is wholly different from the binder of the present invention which consists essentially of less than about 6% by weight water and at least about 94% by weight sugar. Moreover, the highest solid sugar concentration disclosed by LaBaw is theoretically 80%, with 15% fat, which sugar concentration is well below that required in the claimed invention. Thus, LaBaw does not teach or suggest a binder composition consisting essentially of at least about 6% by weight water and at least about a 94% by weight sugar as in the claimed invention.

Claims 1, 9, and 17, and all claims dependent thereon, are patentable over Cook in view of LaBaw because neither reference, alone or in combination, teaches or suggests a binder mixture consisting essentially of less than about 6% by weight water and at least about 94% by weight sugar.

**4. Cook does not teach or suggest mixing ingredients for a granola or snack-food product with a liquid binder at an elevated temperature.**

Claims 1, 8, 12, and 16 stand rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent No. 4,451,488 to Cook et al. (Cook). Cook does not teach or suggest mixing both dry ingredients for a granola or snack food product with a liquid binder at elevated temperature as in the claimed invention. In contrast, Cook discloses in col. 4, lines 6-15 that dry ingredients, such as granola mix, dried fruit, crisp rice, and peanuts are blended separately from the binder ingredients with the binder ingredients of Cook, sugars, glycerin, sorbitol, and corn syrup, being "mixed separately" with salt and an antioxidant and heated to 125 – 135° F. Thereafter, the binder mixture is added to the pre-mixed dry ingredients and blended. Cook, col. 4,

lines 1-20. Thus, Cook teaches away from the present invention by separately blending the dry ingredients and binder ingredients, and further only blending the binder ingredients at an elevated temperature. Teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical*, 837 F.2d 469 (Fed. Cir. 1988). In view of the above, claims 1, 8, 12, and 16, and all claims dependent therefrom, are patentable over Cook because Cook does not disclose mixing ingredients for a granola or snack food product with liquid binder at an elevated temperature as required in the claimed invention.

The Examiner has maintained the position that it would have been obvious to alternatively mix the dry base ingredients and binder together at elevated temperature in view of Cook. However, Cook neither teaches nor even remotely suggests mixing dry ingredients and binder together at an elevated temperature. Therefore, the Examiner cannot properly maintain claims 1, 8, 12, and 16 are obvious over Cook when Cook does not teach or suggest the claimed invention. Moreover, the difference between the claimed invention and Cook is significant as the specification clearly provides that by mixing the binder and snack-food product ingredients at substantially the same temperature during mixing, the liquid binder remains a liquid during the mixing and enables product precursor to be more easily formed when cooled. See Specification page 3, lines 1-9. Cook has no teaching or suggestion whatsoever that mixing the dry base ingredients and binder ingredients at the same elevated temperature would result in superior product formation.

Additionally, the claimed method reduces waste by enabling food fragments collected at any stage of the method to be returned to the starting materials such that no food materials are wasted. In particular, as discussed on page 1, lines 20-24 of the specification as originally filed, the claimed invention is an advance over the prior art because known methods of making granola or snack products require the step of breaking or cutting a sheet of dried, adhered components into desired sizes. Such cutting or breaking results in small pieces of the product, such as nuts, fruit or other ingredients, to break off before packaging of the product. A sieving step is thus required to remove the small bits from the finished product and such small bits are normally discarded as waste.

Instead of discarding such fragments, the claimed invention allows these normally discarded fragments to be optionally passed back to the starting materials. Since the binder materials and granola or snack-food ingredients in the claimed invention are mixed together at an elevated temperature, the returned fragments (ingredients in a solidified binder) can be returned to their initial state (ingredients and a liquid binder) due to the heat. The returned materials are again in the same form as the standard starting materials for the claimed method. See Specification page 6, lines 13-27. Therefore, the present invention enables granola or snack food product to be reversibly formed and broken down into its components as desired. Cook has no disclosure whatsoever which would suggest such a reduction of waste fragments because Cook only discloses mixing the binder ingredients and dry base ingredients separately, and only heating the binder ingredients.

In view of the above, claims 1, 8, 12, and 16, and all claims dependent thereon, are nonobvious and patentable over Cook.

5. **Neither Cook nor LaBaw, alone or in combination, teach or suggest cutting a mixture of ingredients for a granola or snack-food product and a liquid binder at elevated temperature into product precursors.**

New claim 17 recites a method of making a granola or snack-food product which comprises cutting the mixture of ingredients for a granola or snack-food product and a binder into a plurality of product precursors at elevated temperature while the binder is still liquid. Neither Cook nor LaBaw, alone or in combination, teach or suggest a method of making granola and snack-food products wherein a mixture of ingredients plus binder is cut into a plurality of product precursors at an elevated temperature, which are thereafter cooled to yield the desired product(s) without the need for further processing steps. Cook only discloses a mixture of dry base ingredients and a binder which are poured into a forming mold where it is pressed into the desired size and density. See Cook, col. 4, lines 6-15. Cook has no teaching or suggestion, however, of cutting the mixture into a plurality of product precursors at elevated temperature.

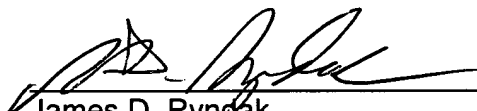
Further, LaBaw does not teach or suggest cutting a mixture of dry base ingredients and a binder into a plurality of product precursors at elevated

temperature while the binder is still liquid. Instead, LaBaw teaches a mixture of solids and a binder which is flattened into bars and cooled in order to set the binder. According to LaBaw, "the cooled bars are then cut, if necessary, further cooled and separated." See LaBaw, col. 6, lines 61-65. Thus, not only does LaBaw not teach or suggest the claimed invention, but LaBaw further teaches away from the present invention by its disclosure of cutting the mixture of the dry ingredients and binder ingredients only after cooling the mixture. Again, teaching away is a *per se* demonstration of a lack of prima facie obviousness. *In re Dow Chemical.*, 837 F.2d 469 (Fed. Cir. 1988). In view of the above, new claim 17 is patentable over Cook and LaBaw because neither reference, alone or in combination, teaches or suggests cutting a mixture of dry base ingredients and a binder into a plurality of product precursors at elevated temperature while the binder is still liquid.

### **CONCLUSION**

In view of the above, claims 1-3 and 5-17 are in condition for allowance and an early indication of allowance is solicited.

Respectfully submitted,



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